

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rules I)	AMENDED NOTICE OF
through XXIX and amendment of ARM)	PROPOSED ADOPTION,
37.95.102, 37.95.106, 37.95.108,)	AMENDMENT, AND REPEAL
37.95.121, 37.95.132, 37.95.139,)	
37.95.140, 37.95.141, 37.95.214,)	
37.95.215, 37.95.225, 37.95.602,)	
37.95.610, 37.95.611, 37.95.613,)	
37.95.702, 37.95.705, 37.95.706,)	
37.95.708 and 37.95.1005 and the)	
repeal of ARM 37.95.109, 37.95.618,)	
37.95.620, 37.95.701, and 37.95.907)	
pertaining to licensure of day care)	
facilities)	

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-366 regarding the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2572 of the 2005 Montana Administrative Register, issue number 24.

2. This amended notice is being filed to provide more information in the rationale regarding the necessity for the proposed changes.

3. The Department believes that rationale published on December 22, 2005, in support of the proposed changes to the day care licensure rules adequately identified the necessity for each of the proposed new rules or rule changes. However, in order to provide a more detailed statement of necessity regarding the proposed new Rules XXII and XXIV and regarding the proposed changes to ARM 37.95.108(7), 37.95.121(3), 37.95.132 and 37.95.140, the Department provides the following supplemental rationale on these specific rules:

Rule XXII

Under 52-2-702, MCA, the Department is charged with assuring that children are provided safety and security while in care. Part of this new rule currently exists in ARM 37.95.108. That existing rule is being repealed and broken into several new rules with separate headings to make it easier for providers to locate the information. The new rule also extends the protections of the existing rule. This is needed to broaden the means of protecting children. Currently, the existing rule provides that no caregiver charged with a crime involving children or a crime involving violence or drugs may be present in the day care or may provide care pending the outcome of the trial. The purpose of that provision is to protect the safety and well-being of the

children in care. The new rule extends that existing prohibition to the following other categories of persons who will not be able to be present in the day care or to provide care in the facility pending outcome of a trial on criminal charges for crimes involving children or for violent or drug related crimes: volunteers, support staff or other adults who are regularly or frequently in the facility. This addition to the existing rule language is needed to close the existing loophole that allows persons who may pose a risk to the children to regularly be present in the day care or to be providing care pending the outcome of the trial on such criminal charges.

Rule XXIV

Currently existing ARM 37.95.109(3) and (4) has provisions pertaining to requests by the department for psychological or psychiatric evaluations or for substance abuse evaluations. That rule is being repealed and broken down into shorter rules with individual headings to make the information easier for providers to locate. Rule XXIV changes the existing standards the department uses for requesting examinations. The current rule provides that no director, caregiver, or adult in residence in the day care facility shall be currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care, as determined by a licensed psychologist or psychiatrist. It then provides that if the department has reasonable cause to believe such a mental illness or emotional disturbance exists, it may request that the person obtain a psychological or psychiatric evaluation at the individual's expense.

Section (4) of the existing rule similarly allows the Department to request a person to obtain a chemical dependency evaluation at the provider's expense if the department has reasonable cause to believe chemical dependency exists.

The new rule changes the focus from a person's diagnosis to the person's behavior and provides that the Department may request an evaluation if the person has engaged in behaviors that may place others at risk. This rule change is needed to move the focus from the diagnosis of the person and a possible assumption that because a person has a particular diagnosis, the person may pose a risk to others. The rule change will require the department to focus on whether the person's behavior is such that it may pose a risk to others. This change is needed to make the rule language more consistent with anti-discrimination laws. The rule is within the Department's authority to provide protection for the health and safety of children in care. Where a person associated with a day care has engaged in behavior that provides reasonable cause to believe that the person may place others at risk, it is reasonable and necessary for the Department to investigate further and to require appropriate evaluations in order to protect children.

Rule 37.95.108(7)

In 52-2-721, MCA, the Department is given the authority to issue licenses for periods not to exceed three years. This rule amendment is needed to notify providers of the criteria the department uses for issuing a three-year license or registration certificate

and the criteria the department uses for issuing a two-year license or registration and to notify providers that under the Department's criteria for extended licenses a provider must operate for at least one year before he is eligible to apply for an extended license or registration. The Department is issuing multi-year licenses because it does not have sufficient staff to inspect every facility on a yearly basis. Providers having no or a limited number of deficiencies in their most recent inspection survey are likely to provide better care and safety for the children in their care. The multi-year licenses issued to some facilities will provide more time for department staff to concentrate on new providers or those with multiple deficiencies.

Rule 37.95.121(3)

Current ARM 37.95.121, which is being amended, is titled "Safety Requirements". It applies generally to all day care facilities. However, section (3) of the rule requires that any animal in "the home" be in good health. That language arguably limits application of the provision to home day cares and group day cares. The amendment to section (3) is therefore needed to resolve this inconsistency and to make it clear that this safety requirement applies to all day care facilities, not just home day cares or group day cares. Animal health is an important safety issue in all day care facilities.

Rule 37.95.132

ARM 37.95.132 addresses transportation of children in day care. All residents of the State of Montana who drive are required to have a current Montana drivers' license under 61-5-102 and 61-5-103, MCA. The change to ARM 37.95.132 clarifies that the operator of a vehicle transporting children in day care have a valid Montana driver's license, rather than being licensed in another state. This amendment is needed in order to ensure that a person transporting children in day care is familiar with Montana traffic laws in order to protect the health and safety of children. The changes to the rule also require that the person transporting a child must possess current CPR and 1st aid certification. This change is needed to provide for the health and safety of children in an emergency since the vehicle operator may be the only one with the child during the transport. The third proposed change to this rule requires that any child being transported must be placed in age appropriate child restraint seats that meet federal recommendations in order to bring the rule into compliance with National Highway Transportation Safety Administration (NHTSA) guidelines for transportation of children. Finally, the change is also needed to make the rule consistent with 61-9-420, MCA, 2003 Laws of Montana, Chapter 407.

Rule 37.95.140

The amendments to this rule are needed to protect the health and safety of children. The rule sets out immunization requirements for children in day care. The first amendment adds the requirement of the varicella vaccine, which is needed to protect the health and safety of children from varicella. Varicella is highly contagious in institutionalized settings such as day care facilities. The second amendment

establishes immunization standards that are consistent with those requirements for children ages five to 12 who are attending schools in Montana. Providing immunization standards that are consistent with school requirements will provide needed protection for children and make it easier for day care operators and parents to have a standard that is uniform with the standard that is also required in the school system.

4. All other rule changes proposed to be adopted, amended, and repealed remain as proposed.

5. The statement of reasonable necessity remains as proposed with the additions as set forth in this notice.

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State January 13, 2006.